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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. JESUS GONZALEZ, Defendant and Appellant.	B284616 (Los Angeles County Super. Ct. No. VA141226)

APPEAL from a judgment of the Superior Court of Los Angeles County, Roger Ito, Judge. Affirmed.

Benjamin Owens, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Marc A. Kohm and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

Jesus Gonzalez appeals from a judgment entered after a jury convicted him of multiple counts of forcible lewd acts and rape of his two daughters, beginning when each was in fifth grade. At trial, the People presented testimony from an expert on Child Sexual Abuse Accommodation Syndrome (CSAAS) to explain the behavior of Gonzalez's daughters in response to the sexual abuse. Gonzalez urges us to reject settled California law holding evidence of CSAAS is admissible to dispel common misconceptions about children's reactions to sexual abuse. Gonzalez also contends the trial court erred when it instructed the jury it could consider evidence of the sexual abuse of each daughter to show Gonzalez's propensity to commit sexual abuse as to the other daughter. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Information*

The amended information charged Gonzalez with eight counts of forcible lewd acts on a child under the age of 14 (Pen. Code, § 288,[1] subd. (b)(1); counts 21-28[2]), two counts of forcible rape of a child under the age of 14 (§ 261, subd. (a)(2); counts 29 & 30), and two counts of forcible rape of a child over the age of 14 (§ 261, subd. (a)(2); counts 31 & 32). The information further alleged as to all counts the special circumstance Gonzalez was convicted in the current case of sexual offenses against more than one victim (§ 667.61, subds. (b) & (e)(1)).

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[1] All undesignated statutory references are to the Penal Code.

[2] Counts 1-20 were dismissed pursuant to section 1385.

Gonzalez pleaded not guilty and denied the special allegations.

B. *The Evidence at Trial*

1. *The prosecution case*

a. The family

Gonzalez and Blanca Becerra had three children together, including daughters Ath. and A.G. Gonzalez also had another son, Aurelio, who previously lived with the family, but Gonzalez sent him to live in Mexico after he became involved in fights at school. Gonzalez and Becerra were married in 2010, after their children were born, but separated in December 2013. Gonzalez told Becerra he had fallen in love with another woman and wanted a divorce. Gonzalez continued living in the family's house after they separated because he was the sole provider and continued to pay for rent, groceries, and other bills. However, Gonzalez slept in the bedroom while Becerra slept in the living room. The children took turns sleeping with Becerra and Gonzalez. In the summer of 2014 Gonzalez moved to a separate home.

b. The abuse of Ath.

Ath. was 16 years old when she testified at trial. During Ath.'s childhood, Gonzalez was "really strict" with her and did not allow her to have friends. He yelled at her and hit her if she did something trivial, such as accidentally spilling a cup of water. She was "very much" afraid of Gonzalez.

Gonzalez started sexually abusing Ath. when she was 10 or 11 years old and in the fifth grade. Gonzalez and Ath. were taking a nap in the same bed, and Ath. "woke up to the feeling of

his hand touching [her] breast" over her bra. Ath. did not know his actions were wrong and believed that because he was her father, "he can probably do this to [her] at any time." When Gonzalez inquired whether Ath. had told her mother about his actions, Ath. assured him she had not.

When Ath. was in the sixth grade, Gonzalez started rubbing her breasts and vagina underneath her clothes. Sometimes Ath. would push his hands away, and Gonzalez would remove his hands; other times he would resist and say, "[L]et me." Ath. believed she would get in trouble if she continued to push his hands away. Towards the end of sixth grade, Gonzalez began putting his finger inside Ath.'s vagina. Gonzalez did this "too many" times to count, but more than 10 times. Ath. would try to push his hands away, but she was only sometimes successful.

When she was in the seventh grade, Gonzalez would lie in bed "with his penis out" and ask Ath. to rub it. Gonzalez asked Ath. if she would "do it" with him, which Ath. understood to mean have "sexual intercourse." Ath. said "no" and expressed a fear of getting pregnant. However, one day Gonzalez "just bent [her] over and went straight ahead" and put his penis in her vagina. Ath. cried the entire time and again "said no," but Gonzalez continued. He had sexual intercourse with Ath. "numerous times," which continued until Ath. was in the ninth grade.

Ath. realized what Gonzalez was doing was sexual abuse when she took a sexual education class in the seventh grade. She was "shocked" and "sad" to realize what her father was doing to her was wrong, and understood then why Gonzalez wanted to keep it a secret. Ath. was scared Gonzalez would hurt her if she disclosed the abuse. She was also concerned about the impact of

disclosure because Gonzalez was the family's sole provider, and she feared her mother would be deported, causing Ath. and her siblings to be placed in an orphanage. Ath. was also upset Gonzalez was physically abusing A.G., and she assured Gonzalez she "won't tell anybody" if he would "leave A.G. alone."

Later that year Becerra noticed Ath. no longer wanted to visit Gonzalez, and she would not bathe for weeks. Becerra asked Ath. if anyone had inappropriately touched her, and Ath. denied she had been touched. Even after Becerra revealed A.G. had disclosed Gonzalez sexually abused her, Ath. continued to deny the abuse. Ath. feared the impact the disclosure would have on her mother. Ath. still loved her father, wanted him in her life, and maintained hope he might one day stop abusing her.

Ath. admitted in cross-examination she was upset at Gonzalez for cheating on her mother, and she blamed him for breaking up the marriage.

c. The abuse of A.G.

A.G. was 12 years old when she testified at trial. From a "young age," Gonzalez would hit A.G. A.G. was born with a dislocated hip and sometimes had difficulty walking straight. Gonzalez would hit her behind the head and tell her to walk straight. He would not allow A.G. and Ath. to laugh and would say mean things to their mother.

When A.G. was 10 or 11 years old and in the fifth grade, Gonzalez began sexually abusing her. By this time Gonzalez lived in his own home. A.G. and Gonzalez would sleep in the same bed, and Gonzalez would "very often" place his hands on A.G.'s breasts. She would try to pull his arm away or dig her

nails into his hands to get him to stop. This touching happened more than five times over the course of six months.

Gonzalez once placed his hands inside her underwear and tried to touch her vagina, but A.G. dug her nails into his hand. Another time Gonzalez tried to touch A.G.'s breasts while she was asleep. Gonzalez once asked A.G. to "massage" his penis, but she refused by saying she was tired. On one occasion Gonzalez "tried to put his penis in [her] butt." A.G. moved away, and Gonzalez did not persist.

Gonzalez told A.G. not to disclose the abuse to anyone. Although A.G. was angry about the abuse, she was too embarrassed to talk about what was happening. She was also afraid of Gonzalez because he would hit her and her sister and scream at them. Gonzalez apologized to her and told her he would stop the abuse. A.G. hoped her father would "see how he was hurting [her]" and stop the abuse, believing "everybody deserves a second chance."

A.G. disclosed the abuse to Becerra after the first few times, but her mother did not believe her. A.G. also told Ath., but felt Ath. similarly did not believe her. After one visit, A.G. told Becerra that Gonzalez had touched her breasts, and Becerra responded by asking if he had touched her "private parts." A.G. "got very upset" and told her "no," and left. Her mother told her she did not have to continue visiting Gonzalez, but she instructed A.G. not to tell anyone about the abuse. Becerra never contacted the police.

A.G. continued to visit Gonzalez because she still loved her father and believed he could change. A.G. thought about escaping, but did not because she "wouldn't leave [her] mom at a hard time" and did not want to upset her mother. A.G. always

understood the abuse was "something wrong," but did not realize it was "that serious" until she heard her middle school classmates joke about sexual abuse. When she was in sixth grade, A.G. decided to tell one of her teachers (teacher) about the sexual abuse because she felt she could trust him.

On cross-examination, A.G. admitted she was upset Gonzalez sent Aurelio away. Becerra told A.G. that Aurelio could not return because Gonzalez "took away his papers." A.G. later told an investigator "one good thing" that might come out of her disclosure was that Aurelio could return from Mexico.

d. Disclosure of the abuse

On February 12, 2016 the teacher was working as an instructional aide at A.G.'s middle school. That day he noticed A.G. looked "unsettled," was "shaking," and had "tears and [a] sad face." The teacher asked A.G. what was wrong, and she disclosed her father was sexually abusing her and she was afraid to go home. The teacher contacted his supervisor and social services.

A.G. and Ath. were later interviewed at the police station, and they both disclosed the sexual abuse. The next day Gonzalez called Becerra. Becerra asked him, "Why did you do what you did?" Gonzalez replied, "I was asleep." When Becerra continued confronting him about the allegations, Gonzalez stated, "It wasn't my intention."

e. The forensic examination

Forensic nurse Malinda Wheeler examined Ath. and A.G. Wheeler found no evidence of sexual abuse in her examinations,

but noted injuries are found in only five to 10 percent of sexual assault examinations of child abuse victims.

f. Expert testimony about CSAAS

Clinical Psychologist Jayme Jones testified as an expert in CSAAS. Although the initial author of the work referred to CSAAS as a "syndrome," Dr. Jones referred to the concept as a "model" because she believed the term syndrome implied specific symptoms or a specific diagnoses, neither of which are part of the model. The purpose of the model is to explain the context in which sexual abuse occurs and to address some of the common myths associated with children who are abused by someone they know.

The model contains five components. Secrecy refers to the abuse taking place in private, which sends a message to the children they aren't "supposed to talk about it." The longer the child keeps the abuse secret, the harder it becomes to disclose it. The closer the relationship between the abuser and the child, the less likely it is the child will disclose the abuse. If the abuser tells the child not to say anything, that also decreases the likelihood of disclosure. Even though the child does not like the abuse, he or she will hold out hope it will stop, ignoring the bad aspects of the relationship and focusing on the good. The child may also worry disclosure would get the abuser in trouble, and he or she would be taken away.

Helplessness has two components. The first component explains that children are not likely to yell or fight back because they are physically smaller and know they will not "win" if they fight back. The second component is that children are taught to obey adults. Children may feel helpless to disclose abuse because

they fear upsetting the adults, getting in trouble, or not being believed. Additionally, depending on the age of the child, he or she may not understand fully what is happening.

The third part of the model, accommodation, addresses how children cope with the abuse when they feel helpless to change the situation. Abused children often return to the care of their abusers or display affection towards them to keep the abuse a secret. If the child is aware the abuser is the sole provider for the family, the child will be concerned about the negative financial consequences of disclosure. Accommodation also occurs when a child "go[es] along with abuse" in order to "spare[]" a sibling from abuse.

Delayed disclosure is the fourth component of the model. One common myth is that children will disclose abuse immediately. As Dr. Jones opined, "the most common disclosure pattern is actually not disclosing." When a child does disclose, he or she will "give a small bit of information and wait to see what the reaction is." If the reaction is negative, "typically they'll stop talking and may or may not find somebody else to talk to."

The fifth component is recantation or retraction, which typically occurs when a child has made a disclosure, but then "takes the disclosure back because something negative happened after the disclosure." If a child disclosed abuse to his or her mother and felt the mother's reaction was not positive, the child may never again disclose, may wait an extended period of time before disclosing again, or may keep disclosing until the child finds someone who believes him or her. About 10 to 15 percent of victims disclose abuse within a year of the first abusive incident, and an additional 20 to 25 percent disclose within the first five years.

Dr. Jones stressed the model does not assess the credibility of a claim, but instead presupposes "that you're dealing with a child that was abused." The model should not be used diagnostically to determine if abuse occurred, but instead, should be used to explain the particular behavior of children who have been abused. Dr. Jones confirmed she had no knowledge of the specific facts of the case and had not spoken to Ath. or A.G.

2. *The defense case*

Los Angeles County Sheriff's Detective Belen Lemus interviewed Becerra a few days after Gonzalez was arrested. Becerra told Detective Lemus that A.G. had asked her to "take [Gonzalez] to court" to bring Aurelio back from Mexico. Becerra also admitted she knew about the sexual abuse.

C. *The Verdicts and Sentencing*

The jury found Gonzalez guilty on all counts and found true the special allegation applicable to all counts that he was convicted of sexual abuse of more than one victim. The trial court sentenced Gonzalez on each of the 12 counts to consecutive terms of 15 years to life, for a total aggregate sentence of 180 years to life.

Gonzalez timely appealed.

DISCUSSION

A. *The Trial Court Properly Admitted CSAAS Evidence*

1. *Proceedings below*

Gonzalez moved before trial to exclude expert testimony about CSAAS, arguing Dr. Jones had no personal knowledge of

the case and had not spoken to Ath. or A.G. Gonzalez asserted the testimony would be unfairly prejudicial by supporting the credibility of Ath. and A.G. He also argued the expert was not necessary to explain the girls' behavior because they would be able to testify about their conduct. The prosecutor responded the CSAAS expert witness was necessary to rebut several misconceptions she anticipated would arise during trial, including Ath.'s and A.G.'s delayed disclosure of the abuse and their continued association with Gonzalez. She proffered the expert would "be testifying as an expert in the field, not as to anything in this particular case."

The trial court indicated it would permit testimony "based on those specific guidelines as articulated by" the prosecutor because Gonzalez would likely call "into question to some extent [Ath.'s and A.G.'s] credibility." The trial court added, "I suppose if you were to acknowledge that they were telling—everything were true and they were not incorrect, then perhaps I would exclude it." The court indicated "if things change, I might revisit" the objection. Gonzalez's attorney did not dispute he would question the credibility of Ath. and A.G.

During his opening statement, Gonzalez's counsel noted the jury would have to decide A.G.'s and Ath.'s credibility. He stated, "You are going to hear from [Ath. and A.G.], two young women, two girls, who at the time of their disclosure are going through the divorce of their parents, a divorce where the father is alleged to have been cheating on the mother, fallen in love with another woman, that he left their mother. . . . [¶] . . . You are the deciders of what's proven, and you're going to have to ask yourself, watching this testimony, is this evidence proof? Is it proof beyond a reasonable doubt? Or do you require more. [¶] And

how do you decide that? You can look at their demeanor. You can think about motive to lie. Motive to be biased. What may make a child say something untrue or true."

During cross examination of Ath. and A.G., Gonzalez's attorney repeatedly asked questions directed at their credibility. He asked A.G., "So even though you were being touched, you'd still return to his house; right?" He later inquired, "But you still opted to go; is that right?" He asked Ath., "In that [sexual education] class they actually taught you a lot about reporting anything that goes wrong or any sort of that conduct that's happening at home; right?" He followed up, "At that point did you ever report it?" He asked both witnesses whether they were angry with Gonzalez for divorcing their mother. He also asked A.G. about her anger at Gonzalez for sending Aurelio to Mexico.

Prior to Dr. Jones's testimony, the trial court instructed the jury with a portion of CALCRIM No. 1193, including, "Dr. Jones's testimony with child sexual abuse accommodation syndrome is not evidence that the defendant committed any of the crimes charged against him." The trial court instructed the jury with CALCRIM No. 1193 a second time after the close of evidence. The trial court instructed, "You have heard testimony from Dr. Jayme Jones regarding child sexual abuse accommodation syndrome. [¶] Dr. Jayme Jones' testimony about child sexual abuse accommodat[ion] syndrome is not evidence that the defendant committed any of those crimes charged against him. [¶] You may consider this evidence only [in] deciding whether or not [A.G. and A.G.'s] conduct was not inconsistent with the conduct of someone who has been molested, and in evaluating the believability of their testimony."

During her closing argument, the prosecutor acknowledged the case largely turned on Ath.'s and A.G.'s credibility. She highlighted Dr. Jones's testimony as a framework through which the jurors should evaluate Ath.'s and A.G.'s credibility, to dispel the myths that sexually abused children would fight back or immediately disclose the abuse.

During his closing argument, Gonzalez's counsel agreed the case turned largely on Ath.'s and A.G.'s credibility. He argued they were "the only witnesses that testified that anything happened," and "the People are asking you to convict . . . based on accusations alone." He contended Ath. and A.G. had a "motive to fabricate charges against" Gonzalez because Gonzalez "broke his family apart, initiated a divorce, sent his son away," was a "strict disciplinarian," and was "verbally abusive" towards them. He noted A.G. had indicated one "good thing" that could happen from the disclosure of the abuse was Aurelio's return from Mexico.

2. *Standard of review*

We review de novo Gonzalez's contention CSAAS evidence should be inadmissible for all purposes. (*People v. Gonzales* (2018) 6 Cal.5th 44, 49 [questions of law reviewed de novo]; *People v. Cromer* (2001) 24 Cal.4th 889, 894 [appellate courts review "determinations of law under . . . . independent or de novo review" standard].) We review the trial court's decision to admit specific CSAAS evidence for an abuse of discretion. (*People v. Powell* (2018) 6 Cal.5th 136, 162 [rulings on admissibility of evidence reviewed for an abuse of discretion]; *People v. Covarrubias* (2015) 236 Cal.App.4th 942, 947 [same].)

3. *CSAAS testimony is admissible to dispel common misconceptions about how children react to sexual abuse*

"[E]xpert testimony on the common reactions of child molestation victims is not admissible to prove that the complaining witness has in fact been sexually abused; it is admissible to rehabilitate such witness's credibility when the defendant suggests that the child's conduct after the incident—e.g., a delay in reporting—is inconsistent with his or her testimony claiming molestation. [Citations.] 'Such expert testimony is needed to disabuse jurors of commonly held misconceptions about child sexual abuse, and to explain the emotional antecedents of abused children's seemingly self-impeaching behavior.'" (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300-1301 [discussing with approval Court of Appeal opinions admitting CSAAS expert testimony to support its holding expert may explain why the parent of a sexually molested child would not report the abuse]; accord, *People v. Brown* (2004) 33 Cal.4th 892, 906 [expert testimony admissible to show why a victim of domestic violence might recant previous report of abuse, noting admissibility of CSAAS expert testimony]; *People v. Gonzales* (2017) 16 Cal.App.5th 494, 503 [instruction on CSAAS testimony proper where evidence admitted to explain why child victim of sexual abuse would still act loving and trusting toward abuser]; *People v. Mateo* (2016) 243 Cal.App.4th 1063, 1069 [trial court did not err in admitting CSAAS expert testimony without limiting instruction where defense counsel did not request instruction]; *People v. Patino* (1994) 26 Cal.App.4th 1737, 1744 [CSAAS evidence is admissible for "the limited purpose of disabusing a jury of misconceptions it might hold about how a

child reacts to a molestation"]; *People v. Housley* (1992) 6 Cal.App.4th 947, 957 [CSAAS testimony was admissible to explain child's delay in reporting rape and later recantation of charges, explaining CSAAS testimony "may—with certain limitations—be used to disabuse the jury of common misconceptions concerning abuse victims"]; *People v. Bowker* (1988) 203 Cal.App.3d 385, 394 [CSAAS expert testimony "admissible *solely* for the purpose of showing that the victim's reactions as demonstrated by the evidence are not inconsistent with having been molested"].) Where the defense attorney places the credibility of the child victim at issue, the prosecution may offer CSAAS evidence in its case-in-chief, for example, to explain why a child victim would delay reporting the abuse. (*Patino,* at pp. 1744-1745.)

4. *The trial court properly admitted CSAAS expert testimony to address common misconceptions about children who are victims of sexual abuse*

Citing out-of-state and federal cases, Gonzalez urges us to break from well-settled California law and follow other states in excluding CSAAS testimony. The cases relied on by Gonzalez exclude CSAAS evidence for all purposes because of the danger the testimony may invade the province of the jury and lead the jury to rely on the testimony as evidence of abuse. (See, e.g., *Newkirk v. Commonwealth* (Ky. 1996) 937 S.W.2d 690, 694 [expressing concern CSAAS testimony may invade the province of the jury and holding testimony is inadmissible "where the determination of credibility is synonymous with the ultimate fact of guilt or innocence"]; *State v. Stribley* (Iowa App. 1995) 532

N.W.2d 170, 174 ["The problem with this type of evidence is it may incorrectly be used by a fact-finder as evidence of abuse."].)

As an initial matter, we are not bound by out-of-state and federal cases. (*People v. Troyer* (2011) 51 Cal.4th 599, 610 [out-of-state cases not binding on California courts]; *Ammerman v. Callender* (2016) 245 Cal.App.4th 1058, 1086 ["'Where out-of-state authority is at odds with California law, it lacks even persuasive value.'"]; *People v. Williams* (2013) 56 Cal.4th 630, 668 [federal appellate authority not binding on California courts].) Moreover, as discussed, California courts have concluded to the contrary, holding CSAAS evidence may be used to explain a child victim's behavior in responding to sexual abuse in appropriate circumstances. (See *People v. McAlpin, supra*, 53 Cal.3d at pp. 1300-1301; *People v. Brown, supra*, 33 Cal.4th at p. 906; *People v. Housley, supra*, 6 Cal.App.4th at pp. 955-956.)

The trial court did not abuse its discretion in admitting the evidence. (*People v. Powell, supra*, 6 Cal.5th at p. 162; *People v. Covarrubias, supra*, 236 Cal.App.4th at p. 947.) Gonzalez's attorney urged the jury in his opening statement to consider Ath.'s and A.G.'s motives to lie. During cross-examination, he questioned Ath. about her continued visits with Gonzalez and why she did not disclose the abuse, even after learning in school about sexual abuse and the importance of disclosure. He questioned A.G. about her decision to continue visiting Gonzalez, her lying to her mother about whether she was being abused, and her anger at Gonzalez for sending Aurelio away. Gonzalez's attorney again argued during closing argument Ath. and A.G. had a motive to fabricate their testimony because they were angry Gonzalez broke the family apart, initiated a divorce, sent Aurelio away, and verbally abused them. As further proof of

fabrication, he highlighted A.G.'s statement one "good thing" that might come out of her disclosure would be Aurelio's return. These questions focused on the specific misconceptions and """seemingly self-impeaching behavior""" addressed by Dr. Jones's testimony concerning accommodation and delayed disclosure. (*People v. Brown, supra*, 33 Cal.4th at p. 906.)

In addition, the trial court instructed the jury both before and after Dr. Jones's testimony with CALCRIM No. 1193, including that the jury could only consider Dr. Jones's testimony to explain the girls' conduct, not as evidence Gonzalez committed the charged crimes. Dr. Jones testified she had no knowledge of the specific facts of this case, and the model cannot diagnose whether someone has been abused.

B. *The Trial Court Properly Instructed the Jury with CALCRIM No. 1191B*

1. *Proceedings below*

The trial court instructed the jury with CALCRIM No. 1191B, which provides, as read to the jury, "The People presented evidence that the defendant committed the crimes of forcible lewd act on a child, and rape, as charged in Counts 1 through 12. [¶] If the People have proved beyond a reasonable doubt that the defendant committed one or more of these crimes, you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit sexual offenses, and based on that decision, also conclude that the defendant was likely to commit the other sex offenses charged in this case. [¶] If you find that the defendant committed one or more of these crimes, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by

itself to prove that the defendant is guilty of another crime. The People must still prove each charge and allegation beyond a reasonable doubt." Gonzalez did not object to the trial court giving the instruction.

2. *The trial court properly instructed the jury with CALCRIM No. 1191B*

Gonzalez contends the trial court violated his due process rights by instructing the jury with CALCRIM No. 1191B, allowing the jury to consider the charged sexual offenses committed as to one child to prove the charged sexual offenses committed as to the other child. The People assert Gonzalez forfeited his challenge to the instruction by failing to object to the jury instruction at trial and, in any event, the instruction was proper. We agree the instruction was proper.

"'Failure to object to instructional error forfeits the issue on appeal unless the error affects defendant's substantial rights.'" (*People v. Burton* (2018) 29 Cal.App.5th 917, 923; accord, *People v. Cardona* (2016) 246 Cal.App.4th 608, 612 ["In general, the failure to object to an instruction bars a defendant from challenging the instruction on appeal."].) Substantial rights are affected when a trial court commits reversible error under *People v. Watson* (1956) 46 Cal.2d 818. (*Cardona,* at p. 612; *People v. Mitchell* (2008) 164 Cal.App.4th 442, 465].) In his reply brief, Gonzalez contends he did not forfeit his challenge to the instruction because he is asserting a violation of his due process rights.

Even if Gonzalez preserved his constitutional due process challenge to the instruction, the Supreme Court in *People v. Villatoro* (2012) 54 Cal.4th 1152, 1160, 1162, held Evidence Code

section 1108 properly permits the jury to rely on currently charged sex offenses to find the defendant guilty of other charged sex offenses. Further, the *Villatoro* court approved the trial court's instruction with a modified version of CALCRIM No. 1191, similar to the instruction given here, which provided, "'If you decide that the defendant committed one of these charged offenses, you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit the other charged crimes.'" (*Villatoro*, at pp. 1166-1167.)

We are bound by the Supreme Court's pronouncement of the law. (*K.R. v. Superior Court* (2017) 3 Cal.5th 295, 308 ["'it is established that a holding of the Supreme Court binds all of the lower courts in the state, including an intermediate appellate court'"]; *People v. Johnson* (2012) 53 Cal.4th 519, 527-528 [decisions of Supreme Court are binding on appellate courts].) Given that the trial court here instructed the jury using similar language to that approved in *Villatoro*, we reject Gonzalez's contention of instructional error.

DISPOSITION

The judgment is affirmed.

FEUER, J.

WE CONCUR:

ZELON, Acting P. J.

STONE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.